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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Human Rights Council must call for the protection of human rights defenders in Gambia

Gambia will be examined under the universal periodic review (UPR) for the second time on 28 October 2014. Since its previous examination under the UPR in 2010, the human rights situation in Gambia has deteriorated. This situation, exacerbated by the failure of Gambia to implement key recommendations at the review in 2010, requires action in the Human Rights Council. Amnesty International urges the Council, its members and observer states to condemn human rights violations committed by the Gambian authorities and to call for accountability for violations in the face of mounting repression. The organisation urges particular attention to ensuring that human rights defenders, including those who have contributed to the UPR process, do not face reprisals.[1] Amnesty International encourages Council members and observers states to use the UPR to obtain substantive commitments to the improvement of the human rights situation in Gambia.

The human right situation in Gambia:

Attacks against journalists and human rights defenders

The government tightly controls the media, and the rights to freedom of expression and assembly are seriously curtailed. Human rights defenders and journalists face harassment, intimidation, arbitrary arrest and detention, torture and enforced disappearance. The President has also repeatedly criticized human rights defenders for promoting and protecting the human rights of sexual minorities.

Since 2013, Gambia has passed legislation which restricts the right to freedom of expression:

• In August 2014, the National Assembly passed the Criminal Code (amendment) Act which is being reviewed by the Presidency as of 10 September 2014. The bill which AI obtained increases the punishment for what is defined as "aggravated homosexuality" to life imprisonment. It introduces the charge "absconding state officials", which could be used to target individuals who express dissent and flee the country. It is punishable by up to 500,000 Dalasi (approx. US$12,700) and five years in prison.

• In July 2013, the National Assembly passed the Information and Communication (amendment) Act, allowing for penalties of up to 15 years' imprisonment and hefty fines for criticizing government officials online, spreading "false news" about the government or public officials, making derogatory statements against public officials, or inciting dissatisfaction or instigating violence against the government.

• In May 2013, the National Assembly passed the Criminal Code (amendment) Act, broadening the definition of various offences and imposing harsher punishments for acts of public disorder, such as "hurling abusive insults" or "singing abusive songs," and for giving false information to a public servant. The amendment criminalizes personal expression through choice of clothing, particularly for those who do not conform to dominant gender 'norms'.

In this climate of fear, most human rights defenders and journalists practice self-censorship, and many are forced into exile. Several civil society groups told Amnesty International they would not take part in the UPR process of Gambia for fear of reprisals. Groups that made UPR submissions fear reprisals.

The case of Muslim cleric and human rights defender Imam Baba Leigh illustrates measures of reprisals against those who speak out against human rights violations. Imam Baba Leigh was subjected to torture and enforced disappearance for publicly condemning the government's use of the death penalty. He was arrested on 3 December 2012 by two National Intelligence Agency (NIA) officers and taken to their headquarters for questioning. He said he was beaten for

[1] See A/RES/65/281, annex, para. 30.

several hours over ten days, including with batons, cables and whips. One night, NIA agents threw him in a hole in the ground with his hands and feet tied and poured in sand up to his chest pretending to bury him alive. Imam Baba Leigh was detained incommunicado for five months. He was released following a presidential pardon in May 2013. To date, there has been no investigation into his enforced disappearance and torture and none of the perpetrators have been brought to justice.

Arbitrary executions and death penalty

Despite accepting recommendations to move towards the abolition of the death penalty during its 2010 UPR, the government arbitrarily executed nine death row inmates by firing squad in 2012. These were the first executions in the country in nearly 30 years. No prior notification was given to the prisoners, or to their families, lawyers or consular representatives for the foreign nationals. At least three of the prisoners had not exhausted their legal appeals. The authorities did not confirm the executions until several days later. The bodies have not been returned to the families for burial.

Under the Criminal Procedural Code, the death penalty is mandatory for murder, which prevents judges from exercising their discretion to consider any extenuating circumstances of an individual case. Many courts and judicial bodies around the world, including in Africa, have ruled mandatory death sentencing as a violation of human rights.

Following the 2012 executions, the President declared a "conditional" moratorium dependant on the rise or fall of the crime rate. A review of the desirability of the death penalty in the Gambia by the National Assembly, mandated in the 1997 Constitution, is now seven years overdue.

Impunity for human rights violations and lack of cooperation with United Nations and regional human rights mechanisms

Officers of the NIA, the police force, and the military regularly commit human rights violations with impunity. The culture of impunity also protects high political authorities alleged to have ordered the arrest, detention, torture or disappearance of individuals or the execution of persons on death row.

The government has made no progress in implementing the judgements of the Economic Community of West African States (ECOWAS) Court of Justice in the cases of Gambian journalists.

• Ebrima Manneh of the Daily Observer was arrested in 2006 and in 2008 the (ECOWAS) Court of Justice ordered the government to release him from unlawful detention and pay him compensation. As of September 2014, the government and police officials continue to deny that he is in their custody.

• Musa Saidykhan alleges that he was tortured after state security agents raided *The Independent* newspaper in March 2006, shut it down and imprisoned its staff. After his release in April 2006, he fled to Senegal. In December 2010, the ECOWAS Court of Justice found that he had been "arrested, detained and tortured by the [Gambian] agents for 22 days, without any lawful excuse and without trial" and ordered the government to pay him USD 200,000 in compensation.

• Deyda Hydara, editor of *The Point* newspaper and president of the Gambia Press Union, was shot and killed in his car on 16 December 2004. No one has ever been brought to justice for his killing. On 10 June 2014, the ECOWAS Court of Justice ruled against the Gambian government for failing to conduct a diligent investigation into the killing of Deyda Hydara.

Gambia has consistently failed to implement resolutions by the African Commission on Human and Peoples' Rights, calling on the government to investigate all allegations of torture in detention and extrajudicial executions and to comply with the decisions of the ECOWAS Court of Justice.

On 6 August 2014, the authorities unilaterally postponed, without adequate explanation, the visits by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.

Recommendations to the members and observer states of Human Rights Council

Amnesty International urges the members and observer states of the Human Rights Council to use the UPR to:

- Support measures to prevent intimidation or reprisals by or tolerated by the Gambian government against individuals who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights;
- Hold the Gambian authorities to account for their failure to implement recommendations accepted during the 2010 Universal Periodic Review and for the deterioration of the human rights situation since that time;
- Urge the Gambian President to request that the National Assembly reconsiders the Bill for the Criminal Code (Amendment) Act 2014 and to recommend repealing provisions that are not in line with International Human Rights law;
- Urge Gambia to repeal legislation that does not comply with international and regional human rights law and which restricts freedom of expression, in particular the Information and Communication (amendment) Act 2013 and Criminal Code (amendment) Act 2013;
- Call on Gambia to ensure that all persons, including journalists, opposition leaders, real or perceived government opponents, and human rights defenders are able to freely exercise their rights to freedom of expression, association and peaceful assembly without fear of arrest, detention, intimidation or harassment;
- Insist that the Gambian authorities investigate all allegations of torture or other ill-treatment and hold to account those suspected of these human rights violations;
- Call on Gambia to fully and effectively implement the judgments of the ECOWAS Court of Justice and the resolutions on the human rights situation in the Gambia adopted by the African Commission on Human and Peoples' Rights;
- Urge Gambia to establish an immediate moratorium on executions, with a view to abolition of the death penalty;
- Encourage Gambia to ratify, without reservations, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, International Convention for the Protection of All Persons from Enforced Disappearance (recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other states parties), and the African Charter on Democracy, Elections and Governance.